

MICHIGAN SUPREME COURT

December 23, 2003

MAURA D. CORRIGAN
CHIEF JUSTICE

CADILLAC PLACE, SUITE 8-500
3034 WEST GRAND BOULEVARD
DETROIT, MI 48202-6034
313-972-3232

The Honorable Jennifer Granholm
Governor
George W. Romney, 2nd Floor
P.O. Box 30013
Lansing, MI 48909

The Honorable Rick Johnson
Speaker of the House
P.O. Box 30014
Lansing, MI 48909-7514

The Honorable Ken Sikkema
Senate Majority Leader
P.O. Box 30036
Lansing, MI 48909-7536

Dear Governor Granholm, Senator Sikkema, and Speaker Johnson:

I write to you today to discuss the manner in which Michigan promulgates its child support formula manual. The Supreme Court has authorized revisions to the manual following a federally mandated review process that involved extensive public comment, some of which the Court heard at a public hearing in June of this year. A copy of the order authorizing the revisions is attached to this letter.

This review process has given rise to concerns about the manner in which Michigan developed and now revises its child support formula. My colleagues and I have concluded that the judicial branch is not well suited to the task of revising the formula, a process that involves making a series of policy choices in an area that engenders significant public discussion and disagreement. We urge that you consider amending the Friend of the Court Act to move this function to the policy-making branches, which are constitutionally designed to make the types of choices that this process necessarily involves.

Some background information might be useful. In 1983, the Governor and the Legislature enacted the Friend of the Court Act, MCL 552.501 et seq. This statute created the Friend of the Court Bureau (FOCB) within the State Court Administrative Office (SCAO) and directed the Bureau to formulate child support guidelines "based on the needs of the child and actual resources of the parent." Pursuant to the statutory mandate, the Bureau created the FOCB Advisory Committee, which in turn created a Child Support Formula Subcommittee to carry out the task of developing the guidelines. Michigan's first child support formula manual was published and became effective in 1987.

Federal law also plays an important role in the development of the manual. With passage of the Family Support Act of 1988, Congress directed the states to establish and maintain presumptive child support guidelines. 42 USC 667. The federal statute permits states to create these guidelines "by law or by judicial or administrative action." The Act also requires the states to review their guidelines at least once every four years "to ensure that their application results in the determination of appropriate child support award amounts."

In 2002, the FOCB undertook the federally mandated review of the manual and recommended the most significant revisions to the manual since it came into existence in 1987. This process generated significant public comment, which culminated in the Court's administrative hearing in June. The Court was persuaded that some, but not all, of the proposed changes to the manual should be implemented. While we have authorized revisions to take effect, a number of factors have led us to conclude that this is a process that should no longer be carried out by the judicial branch.

It is our view that establishing the child support formula is not a proper judicial function. It also does not easily lend itself to judicial consideration. The Supreme Court is a deliberative body whose primary missions are to decide cases and controversies that come before it and to administer the state court system. It is generally ill suited to make, and is not supposed to make, policy judgments. The Legislative and Executive branches, on the other hand, are constitutionally designed to make the types of policy choices at stake in this process.

The most recent changes to the formula engendered significant debate and some opposition. The amount, range, and strength of opinion expressed in this process reinforce our conclusion that it would be more appropriate to place this responsibility in the policy-making branches of state government. Indeed, this is the model a majority of the states have adopted, with the child support guidelines promulgated in some states by the Legislature, in some by the Legislature with the input of a commission, and in some by an agency or commission under a statutory delegation of authority.

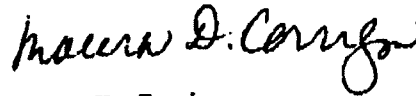
Such a process, it seems to us, would better serve the great number of persons with an interest in the outcome. Locating this responsibility in the policy-making branches makes the decisions more accessible to the public and places them in an arena that is better equipped to solicit public input and make policy choices among competing interests. These are tasks that the judicial branch is not in the best position to perform.

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We urge you, therefore, to consider amending the Friend of the Court Act to move responsibility for promulgating and revising the formula out of the judicial branch. We have directed our staff to make appropriate contacts with staff in your branches to pursue the possibility of such amendments. We trust that you will consider them to be in the best interests of the millions of Michigan citizens who are affected by decisions concerning child support.

Sincerely,

A handwritten signature in black ink, reading "Maura D. Corrigan". The signature is fluid and cursive, with the first name "Maura" being more prominent.

Maura D. Corrigan
Chief Justice

cc: The Justices
The Honorable John Cherry, Lt. Governor
The Honorable Robert Emerson, Minority Leader
The Honorable Dianne Byrum, Democratic Leader

Attachment

Order

Entered: December 23, 2003

Michigan Supreme Court
Lansing, Michigan

Maura D. Corrigan,
Chief Justice

Michael F. Cavanagh
Elizabeth A. Weaver
Marilyn Kelly
Clifford W. Taylor
Robert P. Young, Jr.
Stephen J. Markman,
Justices

2003-22

Michigan Child Support Formula Manual

Federal law requires that, at least once every four years, a state must review its child support guidelines and make any necessary revisions. 42 USC 667 and 45 CFR 302.56. The Michigan Friend of the Court Act, MCL 552.501 *et seq.*, refers to the Michigan guidelines as the "formula." The Act assigns the formula-review task to the Friend of the Court Bureau within the State Court Administrative Office. The Bureau is to act "under the supervision and direction of the supreme court." MCL 552.519(1) and (3)(a)(vi).

As part of the current federally mandated review, the Friend of the Court Bureau recommended several substantive changes to the Michigan Child Support Formula Manual. This Court instructed the Bureau to publish those recommendations and invite written comments. That was done. This Court also heard from several speakers at a public hearing held on June 19, 2003.

Notice of the proposed formula changes and an opportunity for comment in writing and at a public hearing having been provided, and consideration having been given to the comments received, we are persuaded that, pursuant to MCL 552.519(3)(a)(vi), the Friend of the Court Bureau should adopt those proposed substantive revisions that are related to (1) determining medical support and health care coverage obligations, (2) setting child support before determining spousal support, and (3) deviating from the formula.

We are not persuaded that any other substantive revisions of the formula should be made at this time.

On order of the Court, the State Court Administrative Office shall publish the revised Michigan Child Support Formula Manual as soon as is practicable, to take effect October 1, 2004.



I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

December 23, 2003

Corbin R. Davis

Clerk